IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1374 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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KAJU TALSHI SUDHREJIA VAGHARI - Appellant(s)
Versus
JAYANTILAL BHOVAN & 1 - Defendant(s)

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Appearance :
MR ND NANAVATI for Appellant(s) : 1,
MR MD PANDYA for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 04/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award dated 05.09.1980 passed by the Motor Accident Claims Tribunal, Junagadh (for short, “the Tribunal”) in M.A.C.P. No. 127 of 1998 and group petitions.

2.0 The brief facts of the case are that on 26.05.1978 the appellant herein was traveling in a Taxi bearing Registration No. GTX – 269. At that time, an S.T. Bus bearing Registration No.

GTE – 3692 and which was coming from the opposite direction, dashed the said Taxi. On account of the said accident, one of the passengers expired and others suffered serious bodily injuries. The appellant herein suffered serious bodily injuries on account of the said accident. He, therefore, filed a claim petition before the Tribunal claiming compensation of Rs. 25,000/-. It was alleged that the said S.T. Bus was being driven in a very rash and negligent manner. The Tribunal, by impugned award, partly allowed the claim petition of the appellant. Hence, the present appeal.

3.0 Heard learned counsel for the parties. It was the say of the Driver of the S.T. Bus that there was contributory negligence on the part of the Taxi Driver in the occurrence of the said accident. However, the Tribunal has not believed the said say of the Driver of the S.T. Bus since no such contention was raised in his written statement. The said contention was raised for the first time only while giving his deposition.

Hence, the Tribunal was completely justified in not looking into the evidence since the same was not pleaded in the pleadings. Therefore, relying on the 'Panchnama' (Exh. 57) and the photographs of the place of the incident, the Tribunal has come to the conclusion that the accident in question had occurred on account of rash and negligent driving on the part of the Driver of the S.T. Bus.

3.1 While considering the aspect of compensation, the Tribunal has looked into the medical and other evidence available on record. Looking to the nature of injuries caused to the appellant, the period of hospitalization and considering the fact that he was earning Rs. 20/- to Rs.25/- per day, the compensation awarded by the Tribunal, in my opinion, is just and reasonable. No case has been made out by the appellant for enhancement of the amount of compensation. I am in complete agreement with the reasonings given by and the findings arrived at by the Tribunal and, hence, do not find any

reason to interfere in this appeal.

4.0 In the result, the appeal is dismissed. No order as to costs.

(K. S. Jhaveri, J.)

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